

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 07-04**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of sales and use tax to overnight rental units and related service charges.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

The taxpayer manages overnight rental property in Tennessee. In addition to a base rental charge, the taxpayer may charge its customers for services such as cleaning and concierge services. The taxpayer also requires a deposit from its customers, which the taxpayer retains if the customer fails to use the rental that it has reserved. The taxpayer also charges fees for making a reservation and for additional items the customer may request, such as firewood.

QUESTIONS

1. Are cleaning fees subject to sales tax?
2. Are forfeited deposits subject to sales tax?
3. Are reservation fees subject to sales tax?
4. Are non-refundable pet deposits subject to sales tax?
5. If the taxpayer offers a concierge service in which it purchases tickets to a show in advance to provide to the customer upon arrival, is the taxpayer's sale of the tickets to the customer subject to sales tax? The taxpayer paid tax to the original seller at the time it purchased the tickets.

6. Are “pass through” charges for items of tangible personal property such as firewood subject to sales tax? The amount charged by the taxpayer for these items always equals the amount paid to the taxpayer’s supplier.
7. If the taxpayer bundles the charge for an overnight rental and the charge for a wedding service, how does sales tax apply? In other words, the taxpayer provides wedding services and an overnight rental for a single price.
8. If trip insurance or damage waiver insurance is sold at the time the customer makes a reservation, how does sales tax apply?

RULINGS

1. As explained in the analysis below, the answer depends on the type of cleaning performed.
2. Yes.
3. Yes.
4. Yes.
5. The taxpayer’s charge to the customer for the tickets is subject to sales tax. The taxpayer can present a resale certificate to the original seller in order to purchase the tickets without paying sales tax. If the taxpayer has paid tax on its purchase and resold the tickets without collecting sales tax, it may take credit for the amount of tax paid against the amount of tax due.
6. Charges for items of tangible personal property are subject to sales tax regardless of whether the taxpayer marks up the price. The taxpayer can present a resale certificate to the supplier in order to purchase the items without paying sales tax. If the taxpayer has paid tax on its purchase and resold the items without collecting sales tax, it may take credit for the amount of tax paid against the amount of tax due.
7. Sales tax will apply to the entire bundled charge for taxable and nontaxable services. If, on its invoice, the taxpayer separately states the charge for wedding services and the charge for overnight rental, the rental is subject and the wedding services may or may not be subject to tax. If the taxpayer separates out any taxable portions of the wedding services, such as any charges for tangible personal property (e.g., flowers, wedding cake, etc.), then the remaining portions (e.g., planning and coordinating services, etc.) will not be subject to tax.
8. If, on its invoice, the taxpayer separately states the charge for insurance and the charge for overnight rental, only the rental is subject to tax.

ANALYSIS

General discussion of the Retailers’ Sales Tax Act

Tenn. Code Ann. § 67-6-201 provides that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state or

furnishes any of the things or services that are taxable under the Retailers' Sales Tax Act.¹ Specifically, Tenn. Code Ann. § 67-6-202 levies tax on the sales price of each item of tangible personal sold at retail in Tennessee, and Tenn. Code Ann. § 67-6-205 levies tax on the gross charge for those services that are specifically subject to tax under the Act.

“Sales price” means:

the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expense whatsoever...

Tenn. Code Ann. § 67-6-102(37). “Sales price,” however, does not include cash discounts² or interest paid by the purchaser for making deferred payments. *Id.*

Although the term “gross charge” is not defined by statute, the inclusion of taxable services in the definition of “sales price” indicates that the tax base (*i.e.* gross charge) for services is defined as broadly as the tax base for tangible personal property. Moreover, “gross sales” is defined as “the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter...without any deduction whatsoever of any kind or character, except as provided in this chapter.” Tenn. Code Ann. § 67-6-102(19).

Tenn. Code Ann. § 67-6-102(34)(F) includes the following as two of the various services that are taxable under the Act:

(i) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. The tax does not apply, however, to rooms, lodgings or accommodations supplied to the same person for a period of ninety (90) continuous days or more...;³

¹ Tenn. Code Ann. § 67-6-201 includes other taxable privileges, such as using tangible personal property in this state, which are not at issue in this ruling.

² “Cash discount” is a term of art that means “a deduction from billed price which seller allows for payment with a certain time; *e.g.* 10% discount for payment within 10 days” or “a discount offered for early payment of an invoice.” BLACK’S LAW DICTIONARY, 6th Ed., p. 217.

³ Tenn. Code Ann. § 67-6-102(34)(F)(i) goes on to provide that certain charges related to time-share estates are not subject to tax. However, that portion of the statute is not applicable to the facts presented in this ruling.

(v) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made for the laundering or dry cleaning....⁴

In 2001, the General Assembly enacted provisions specifically applying to companies that manage, on behalf of individual property owners, the overnight rental of vacation lodgings owned by those individuals (*e.g.* cabins and chalets). In essence, the provisions state that the property management company, rather than the individual property owner, will be treated as the taxpayer for sales tax and business tax⁵ purposes. Tenn. Code Ann. §§67-4-702(a)(2), (11), (13), and (24); 67-4-730; 67-6-501(d). Sufficient facts are not present in this ruling to determine whether these provisions apply to the taxpayer at issue.

1. Certain cleaning fees are subject to sales tax

As discussed above, retail sales in Tennessee are subject to sales tax. Tenn. Code Ann. § 67-6-102(34)(A) defines a retail sale to include a “taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than resale.” Also subject to tax are “any services that are a part of the sale of tangible personal property....” Tenn. Code Ann. § 67-6-102(37). Therefore, a service is subject to tax if it is: 1) a service rendered as part of a taxable sale of tangible personal property, or 2) a specifically taxable service rendered in Tennessee. Cleaning tangible personal property is a specifically taxable service under Tenn. Code Ann. § 67-6-102(34)(F)(v) and, therefore, is generally subject to the sales tax levied by Tenn. Code Ann. § 67-6-205(a). Cleaning real property is not subject to sales tax. Accordingly, any charge by the taxpayer for cleaning tangible personal property is subject to sales tax. For example, if the taxpayer provides the service of having its guest’s clothes laundered or dry-cleaned, it should provide a resale certificate to its supplier and charge sales tax to its guest.

True charges for cleaning a room are not subject to tax because the room is real property. However, a provider of taxable lodging services cannot reduce the tax base for that service by separately stating a fee for cleaning that is routinely performed as part of renting the lodging service. *See, e.g., Saverio v. Carson*, 208 S.W.2d 1019 (Tenn. 1948) (holding that such an attempted division or separation of the charge for services rendered would render the law unworkable). If the cleaning fee is generally charged to all guests, it is an inseparable portion of the overnight lodging service and is subject to tax as part of the gross charge for the rental. However, if the fee is only charged to guests under abnormal circumstances (for example, a guest violates the non-smoking rule and is charged an additional cleaning fee), the additional room cleaning fee would not be subject to tax.

⁴ The term “laundering” means more than merely the washing of clothes and applies to the cleaning of other types of tangible personal property. *ARB Enterprises, Inc. v. Olsen*, 647 S.W.2d 939 (Tenn. 1983).

⁵ The local business tax is imposed under Tenn. Code Ann. § 67-4-701 *et seq.* and applies to all of the goods and services discussed in this ruling. Whereas only specified services are subject to sales tax, all services are subject to business tax unless expressly excluded under Tenn. Code Ann. § 67-4-708(3)(C).

2. Forfeited deposits are subject to sales tax

As discussed above, overnight lodging or transient accommodation services are subject to sales tax based on the gross charge. Tenn. Code Ann. §§67-6-102(34)(F)(i) and 67-6-205. A guest may be required to pay a deposit of one night's charges if he is reserving a room. The substance of the transaction is that the guest has paid consideration for a hotel room plus tax for one night. The guest is entitled to occupy the room. Whether the guest occupies the room or he cancels the reservation after the specified time period is immaterial. The fact remains that a room has been furnished to this guest for consideration charged to the guest. *See, Furniture Lease Co. v. Tidwell*, 495 S.W.2d 535 (Tenn. 1973) (holding that a deposit was part of the "gross proceeds" of the lease and subject to sales tax when a lease of furniture required a deposit equal to one month's rental to reimburse the lessor in the event of forfeiture of the lease, damages, or loss of the furniture).

Under Tenn. Code Ann. § 67-6-102(34)(F)(i), sales tax applies whenever a room has been furnished for consideration for a period of less than ninety (90) days. Therefore, the forfeited deposit is subject to sales tax.

3. and 4. Reservation fees and non-refundable pet deposits are subject to sales tax

As discussed in the analysis of questions 1 and 2, the entire gross charge for renting the accommodation is subject to tax. Accordingly, reservation fees and non-refundable pet deposits are subject to sales tax as part of the gross charge for the accommodation service.

5. Charges by the taxpayer for tickets to a show are subject to sales tax

In addition to the taxation of goods and services discussed above, Tenn. Code Ann. § 67-6-212 levies sales tax on charges for various forms of entertainment and amusement, including the sale of tickets to a show. As with other goods and services, the sale of tickets is taxable when sold at retail. Retail sales are taxable sales to a person:

for any purpose other than for resale Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the commissioner. Any dealer making a sale for resale which is not in strict compliance with rules and regulations shall be personally liable for and pay the tax.

Tenn. Code Ann. § 67-6-102(34)(A). Sales for resale are sales of tangible personal property or taxable services to legitimate dealers "actually selling such property or services as such." Tenn. Comp. R. & Regs. 1320-5-1-.62(1).

When the taxpayer buys tickets to a show and provides them to guests for a charge, the taxpayer does resell entertainment as such. This is not a situation where goods or

services are purchased so that a different service can be provided. *See, e.g., Nashville Mobilphone Co. Inc. v. Woods*, 655 S.W.2d 934 (Tenn. 1983) (holding that a purchase is not for resale if the item is used by the taxpayer to provide a service). Therefore, the Taxpayer should purchase tickets intended for resale without payment of sales tax by providing its supplier a valid Tennessee resale certificate.

However, the taxpayer presents a question in which it has paid sales tax on its purchase of the tickets. Although the Taxpayer is liable for sales tax on the charge to its customers, it is entitled to credit for tax it has already paid to its supplier pursuant to Tenn. Code Ann. § 67-6-507(b), which states:

If the dealer can show by reasonable proof that the dealer has paid any Tennessee sales or use tax to a vendor on personal property or taxable services that such dealer has subsequently sold without collecting tax on the resale of the personal property or taxable service, then the dealer shall be given credit for any such payment in computing any liability to the department for sales or use tax. Reasonable proof can be supplied by invoices and other records that the dealer may obtain from the vendors from which the dealer has made purchases.

6. *“Pass through” charges for items of tangible personal property are subject to tax*

Sales for resale are sales of tangible personal property or taxable services to legitimate dealers “actually selling such property or services as such.” Tenn. Comp. R. & Regs. 1320-5-1-.62(1). When the taxpayer purchases firewood for the purpose of reselling it to its guests, the taxpayer is making a purchase for resale and may use a resale certificate to purchase the firewood. The taxpayer, however, must charge sales tax on the firewood when it sells the firewood to its customer regardless of whether the taxpayer marks up the price of the firewood. The sale of firewood by the taxpayer to its customer is a retail sale as defined in Tenn. Code Ann. § 67-6-102(34)(A) and the taxpayer must collect tax on the sale.

If the taxpayer has paid tax on its purchase and resold the items without collecting sales tax, it may take credit for the amount of tax paid against the amount of tax due. Tenn. Code Ann. § 67-6-507(b).

7. *Sales tax applies to the entire bundled charge for taxable and nontaxable items*

If the taxpayer bundles a taxable service, such as overnight rental of accommodations, together with a nontaxable service, such as a wedding service, for one lump-sum charge, the entire charge will be subject to tax. Conversely, if the taxpayer separately states the charge for wedding services and the charge for overnight rental on its invoice, the rental will be subject to tax and the wedding services may or may not be subject to tax. If the taxpayer separates out any taxable portions of the wedding services, such as any charges

for tangible personal property (e.g., flowers, wedding cake, etc.), then the remaining portions (e.g., planning and coordinating services, etc.) will not be subject to tax. The taxpayer should use a resale certificate to purchase any such items and then should collect tax from its customer. If taxable items of tangible personal property are sold together with nontaxable services for one lump-sum price, the entire charge will be subject to tax.

8. *Charges for insurance are not subject to sales tax if separately stated on the invoice*

Charges for insurance do not constitute a sale of tangible personal property or any taxable service. Also, insurance is not part of the sale of a transient accommodation in the way that reservation fees and room cleaning fees are (see the analysis of questions 1 through 4 above). Accordingly, trip insurance and damage waiver insurance are not subject to sales tax. They would only be taxable if they were not separately stated on the invoice (see the analysis of question 7 above). It is irrelevant how much of the charge the taxpayer keeps. Any amount that is not separately stated on the invoice, but rather is lumped together with the charge for overnight rental, would be taxable.

Deborah A. Toon
Tax Counsel

APPROVED: Reagan Farr
Commissioner of Revenue

DATE: 02-13-07